

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #2	CCRB Case #: 201610506	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/19/2016 3:40 PM	Location of Incident: West 148th Street and Riverside Drive	Precinct: 30	18 Mo. SOL 5/19/2018	EO SOL 5/19/2018	
Date/Time CV Reported Tue, 12/27/2016 1:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 12/27/2016 1:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Lenihan	00746	949202	030 PCT
2. POM Steven Moran	02932	947275	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan stopped § 87(2)(b)	
B.POM Steven Moran	Abuse: Police Officer Steven Moran stopped § 87(2)(b)	
C.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan stopped § 87(2)(b)	
D.POM Steven Moran	Abuse: Police Officer Steven Moran stopped § 87(2)(b)	
E.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan frisked § 87(2)(b)	
F.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan searched § 87(2)(b)	
G.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan searched § 87(2)(b)	
H.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan refused to provide his name to § 87(2)(b)	
I.POM Steven Moran	Abuse: Police Officer Steven Moran refused to provide his name and shield number to § 87(2)(b)	
J.POM Robert Lenihan	Abuse: Police Officer Robert Lenihan refused to provide his name to § 87(2)(b)	
K.POM Steven Moran	Abuse: Police Officer Steven Moran refused to provide his name to § 87(2)(b)	

## Case Summary

On December 27, 2016, § 87(2)(b) filed this complaint with the CCRB in person.

At approximately 3:40 p.m. on November 19, 2016, § 87(2)(b) and his girlfriend, § 87(2)(b) were sitting on a bench at the intersection of Riverside Drive and West 148<sup>th</sup> Street in Manhattan. § 87(2)(b) and § 87(2)(b) then crossed Riverside Drive and began to walk along West 148<sup>th</sup> Street when they were stopped by Police Officer Robert Lenihan and Police Officer Steven Moran of the 30<sup>th</sup> Precinct (**Allegations A, B, C, and D**). Police Officer Lenihan told § 87(2)(b) and § 87(2)(b) that the officers had seen them smoking marijuana, which both § 87(2)(b) and § 87(2)(b) denied. Police Officer Lenihan frisked and allegedly searched § 87(2)(b) (Allegations E and F), then separated § 87(2)(b) from § 87(2)(b) and Police Officer Moran for further questioning. Police Officer Lenihan allegedly asked § 87(2)(b) to empty her pockets and examined some of her possessions (Allegation G) before bringing her back to where § 87(2)(b) and Police Officer Moran were standing. § 87(2)(b) and § 87(2)(b) then both asked both officers for their names and shield numbers, and both officers allegedly refused to provide their identifying information (Allegations H, I, J, and K). The officers then left the area without arresting or summoning § 87(2)(b) or § 87(2)(b).

Two otherwise uninvolved and unidentified civilians recorded video of portions of this incident, which they provided to § 87(2)(b) at the incident's conclusion. § 87(2)(b) provided this video to the CCRB when he filed the complaint. These videos are embedded below and can be found in IAs #13 and #14 (Board Review 01 and Board Review 02). Both videos begin after most of the FADO allegations have allegedly already taken place. Investigators conducted fieldwork at the incident location on December 29, 2016, and February 8, 2017, but were unable to obtain any additional video footage (Board Review 10 and Board Review 11).



2017-01-03\_10-53-39.mp4



2017-01-03\_10-43-20.mp4

## Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) were offered mediation in regards to this incident, but both declined § 87(2)(b).
- A search for a Notice of Claim filed in regard to this incident was requested from the New York City Comptroller's Office and the result will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving either § 87(2)(b) or § 87(2)(b) (Board Review 12).
- Police Officer Lenihan has been a member of the NYPD for six years, and has ten prior allegations in three cases with one substantiated allegation. In CCRB case number

201601630, an allegation of discourtesy was substantiated with a Board recommendation for formalized training. Police Officer Lenihan received instructions. § 87(2)(g)

- Police Officer Moran has been a member of the NYPD for eight years, and has eight prior allegations in six cases with one substantiated allegation. In CCRB case number 201608020, an allegation of force was substantiated with a Board recommendation of formalized training. An NYPD disposition has yet to be determined. § 87(2)(g)

### **Potential Issues**

While the investigation was able to obtain video of portions of this incident, the initial stop and alleged searches were not recorded. Additionally, while the incident was witnessed by multiple uninvolved civilians, including those who recorded these videos, the investigation was unable to identify any of them or obtain statements. § 87(2)(b) obtained the videos from the people who recorded them via the Apple iPhone Airdrop system, which did not provide § 87(2)(b) with the video recorders' names, phone numbers, or email addresses. Neither § 87(2)(b) nor § 87(2)(b) obtained any of this information manually.

The investigation conducted two fieldwork canvasses, on December 29, 2016, and February 8, 2017, to attempt to collect security camera footage or identify witnesses to the incident. Both attempts failed to provide any new sources of information. § 87(2)(g)

### **Findings and Recommendations**

#### **Allegations Not Pleaded**

In her statement, § 87(2)(b) alleged that Police Officer Moran frisked and searched § 87(2)(b). However, § 87(2)(b) alleged that it was Police Officer Lenihan who frisked and searched him, and both officers corroborated that Police Officer Lenihan frisked § 87(2)(b) while denying that Police Officer Moran ever made physical contact with § 87(2)(b). § 87(2)(g)

**Allegation A –Abuse of Authority: Police Officer Robert Lenihan stopped** § 87(2)(b)

**Allegation B –Abuse of Authority: Police Officer Steven Moran stopped** § 87(2)(b)

**Allegation C –Abuse of Authority: Police Officer Robert Lenihan stopped** § 87(2)(b)

**Allegation D –Abuse of Authority: Police Officer Steven Moran stopped** § 87(2)(b)

§ 87(2)(b) filed his initial complaint in person at the CCRB on December 27, 2016, and provided both a sworn statement and videos of this incident. § 87(2)(b) provided a telephone statement on December 28, 2016 (Board Review 05), and was interviewed at the CCRB on

January 5, 2017. Police Officer Lenihan was interviewed on January 26, 2017. Police Officer Moran was interviewed on February 2, 2017.

The following elements of the incident are undisputed between all of the involved parties. On the incident date, § 87(2)(b) and § 87(2)(b) were sitting on a bench near the southwest corner of Riverside Drive and West 148<sup>th</sup> Street as Police Officer Lenihan and Police Officer Moran, who were wearing plainclothes and in an unmarked car, drove through that intersection. § 87(2)(b) and § 87(2)(b) then walked across Riverside Drive, and as they reached the southeast corner of Riverside Drive and West 148<sup>th</sup> Street, they were stopped by Police Officer Lenihan and Police Officer Moran. Over the course of this stop, Police Officer Lenihan walked over to the bench and searched the area for physical evidence that the civilians had been smoking marijuana. Police Officer Lenihan found no such evidence.

§ 87(2)(g) . § 87(2)(b) and § 87(2)(b) both stated that they were not smoking marijuana while sitting on the bench, and were just talking to one another while they waited for a pizza that they had previously ordered to be made. Both civilians stated that they were not smoking, eating, or drinking anything while on the bench and that they were not in possession of marijuana.

In their interviews, both Police Officer Lenihan and Police Officer Moran stated that they observed § 87(2)(b) and § 87(2)(b) smoking what they both believed to be a marijuana cigarette while on the bench. Police Officer Lenihan described seeing the civilians smoke a cigarette wrapped in brown cigar paper, and described both § 87(2)(b) and § 87(2)(b) as smoking the cigarette in a specific manner that is consistent with the use of marijuana as opposed to tobacco. Police Officer Lenihan observed § 87(2)(b) take “a nice long pull” on the cigarette, hold her breath, and then exhale before passing the cigarette to § 87(2)(b) who smoked it in the same manner. Police Officer Moran also mentioned the brown color of the alleged cigarette, and said that as the officers drove by the couple, who were sitting approximately 40 feet away from the car, he could smell marijuana from inside the car. Both officers’ memo books (Board Review 13 and Board Review 14) contain entries describing observing the civilians smoking a marijuana cigarette.

An officer may stop an individual if he has reasonable suspicion that the individual is committing or has committed a crime. People v. De Bour 40 N.Y.2d 210 (1976) (Board Review 06). A person is guilty of criminal possession of marijuana in the fifth degree when he knowingly and unlawfully possesses marijuana and such marijuana is burning or open to public view. New York State Penal Law Section 221.10. (Board Review 07).

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§ 87(2)(g)

**Allegation E –Abuse of Authority: Police Officer Robert Lenihan frisked § 87(2)(b)**

It is undisputed amongst all parties that an officer frisked § 87(2)(b) after stopping him. Both civilians described a frisk occurring in their statements, with § 87(2)(b) identifying Police Officer Moran as the frisking officer (see Allegations Not Pleaded) and § 87(2)(b) identifying Police Officer Lenihan as the frisking officers. Both officers’ memo books note that non-arrest reports were filled out regarding this incident, and both officers confirmed in their statements that UF-250 Stop and Frisk reports were filled out. Police Officer Lenihan made a memo book entry (Board Review 13) stating that § 87(2)(b) was “frisked for safety waistband.” Both officers stated that Police Officer Lenihan frisked § 87(2)(b) during their statements.

§ 87(2)(g)

§ 87(2)(b)

described Police Officer Lenihan as frisking him “all over” his body and § 87(2)(b) described an officer patting § 87(2)(b) from his arms down to his knees in the manner of “an airport security worker,” whereas both officers stated that § 87(2)(b) was only frisked in his waistband area.

During his initial narrative of this incident as well as during the first round of chronological questioning by the investigation during his interview, Police Officer Lenihan made no mention of frisking § 87(2)(b). Police Officer Lenihan only acknowledged that a frisk occurred when specifically asked about it by the investigation. When asked why he frisked § 87(2)(b) Police Officer Lenihan said that it was because during his initial conversation with the civilians, § 87(2)(b) was acting “upset,” and at one point took a step towards Police Officer Lenihan. Police Officer Lenihan did not see any bulges on § 87(2)(b)’s person. Police Officer Lenihan asked § 87(2)(b) if he was carrying anything that Police Officer Lenihan should know about, to which § 87(2)(b) replied that he was not. At this point, Police Officer Lenihan frisked § 87(2)(b)’s waistband area to make sure that he was not carrying any weapons.

A frisk is permissible only if the police possess a particularized reasonable suspicion that a stopped individual is armed. People v. Gonzalez 295 A.D.2d 183 (2002) (Board Review 08).

§ 87(2)(g)

**Allegation F –Abuse of Authority: Police Officer Robert Lenihan searched § 87(2)(b)**

**Allegation G –Abuse of Authority: Police Officer Robert Lenihan searched § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) described PO Lenihan reaching into his jacket pockets, removing all of the contents therein, and then handing these objects back to § 87(2)(b). § 87(2)(b) said that this search occurred contemporaneously with PO Lenihan frisking him. § 87(2)(b) described Police Officer Moran as taking these actions towards § 87(2)(b) reaching into § 87(2)(b)'s jacket pocket and removing his wallet. § 87(2)(b) alleged that while this was occurring, Police Officer Lenihan asked her to empty her pockets. § 87(2)(b) stated that she did so, taking out her wallet, keys, cellphone, and a tube of lip balm. Police Officer Lenihan allegedly opened up the wallet as well as the lip balm, physically inspected them, and then returned them to § 87(2)(b).

§ 87(2)(b)

Both officers denied ever searching either § 87(2)(b) or § 87(2)(b) or seeing their fellow officer conduct any search. When asked why he did not search either civilian, given that he suspected them of possessing marijuana, Police Officer Moran initially responded “We don’t search for drugs.” When asked by the investigation if he ever searched people in such circumstances in his role as an officer, Police Officer Moran said, “I don’t,” before clarifying that in this case, he did not see either of the civilians put the cigarette they were smoking on to their person.

The videos of this incident obtained by the investigation do not show either § 87(2)(b) or § 87(2)(b) being searched, though, as per all parties, the alleged searches would have occurred prior to the start of the video recordings. However, at 0:27 seconds into the video entitled 2017-01-03\_10-43-20 (embedded above), both § 87(2)(b) and § 87(2)(b) are holding what appear to be their wallets and cell phones in their hands. § 87(2)(g)

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**Allegation H – Police Officer Robert Lenihan refused to provide his name to § 87(2)(b)**

**Allegation I –Abuse of Authority: Police Officer Steven Moran refused to provide his name and shield number to § 87(2)(b)**

**Allegation J – Police Officer Robert Lenihan refused to provide his name to § 87(2)(b)**

**Allegation K –Abuse of Authority: Police Officer Steven Moran refused to provide his name to § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) alleged that he asked Police Officer Lenihan for his name, and that Police Officer Lenihan refused to provide his name but did provide his shield number. § 87(2)(b) then asked Police Officer Moran for his name, to which Police Officer Moran allegedly responded by saying that § 87(2)(b) could have Police Officer Lenihan’s shield number instead.

§ 87(2)(b) alleged that she asked both officers for their names, while § 87(2)(b) asked both officers for their shield numbers. She described both officers providing their shield numbers quickly and in an “ignorant” manner, with both officers refusing to provide their names. § 87(2)(b) provided the investigation with an officer’s shield number of “3942”, which approximates Police Officer Moran’s shield number of “2932.”

Both officers stated that they provided their names and shield numbers to the civilians when requested to do so.

At 2:51 of the video entitled 2017-01-03\_10-43-20, § 87(2)(b) appears to ask Police Officer Moran for his name. While Police Officer Moran’s response is inaudible, § 87(2)(b) can be heard saying “What’s your full name?” Police Officer Lenihan then appears to speak inaudibly to § 87(2)(b) prompting him to turn and ask Police Officer Lenihan “What do you mean we only get one name? What do you mean you don’t have to give your first name?”

According to Section 203-09 of the New York City Police Department Patrol Guide, officers must courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests that they do so (Board Review 09).

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date